

RECORDATION NO. 10131 Filed 1425 <sup>-E</sup>

MAR 15 1979 - 11 40 AM

INTERSTATE COMMERCE COMMISSION

GUARANTY AND AGREEMENT

BETWEEN

REX-NORECO, INC.,

GUARANTOR

AND

THE PROVIDENT BANK,

LENDER

(COVERING UP TO ONE HUNDRED (100) GENERAL PURPOSE BOX CARS)

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Filed and recorded with the Interstate Commerce  
Commission pursuant to 49 U.S.C. 11303 (formerly Section 20c  
of the Interstate Commerce Act) on March \_\_\_\_\_, 1979, at  
\_\_\_\_\_, Recordation No. \_\_\_\_\_.

THIS GUARANTY AND AGREEMENT dated as of February 13, 1979, between REX-NORECO, INC., a New Jersey corporation, as Guarantor (hereinafter the "Guarantor"), and THE PROVIDENT BANK, an Ohio banking corporation (hereafter the "Lender");

WHEREAS, TWITTER, INC., a Delaware corporation, (hereinafter called the "Vendor"), REX RAILWAYS, INC., a New Jersey corporation (hereinafter called "Rex" or the "Manager"), and the Vendee, have entered into a conditional sale agreement dated as of the date hereof (hereinafter called the "Conditional Sale Agreement") covering the sale and delivery, on the conditions therein set forth, by the Vendor and the purchase by the Vendee of the railroad equipment described in Annex A to the Conditional Sale Agreement (said equipment being hereinafter called collectively the "Equipment" or "Units" and individually a "Unit"); certain obligations of the Vendee under the Conditional Sale Agreement being guaranteed by Rex Noreco, Inc., a New Jersey corporation (hereinafter called the "Guarantor");

WHEREAS, the Manager has entered into an equipment schedule (hereinafter "Equipment Schedule") with Lenawee County Railroad Company, Inc. (hereinafter "Lessee") signed on behalf of the Manager on October 4, 1978, and signed on behalf of the Lessee on October 9, 1978, which Equipment Schedule (1) is attached to and amends a Lease Agreement made as of September 23, 1977, between the Manager and the Lessee, and (2) provides that the Manager entered into the Equipment Schedule as principal or agent for parties to be named in an amendment (hereinafter called the "Designating Amendment") to the Equipment Schedule to be delivered to the Lessee in accordance with the provisions of section 1(a) of the Lease, as amended by the Equipment Schedule; and

WHEREAS, the Manager and the Owner will deliver to the Lessee a Designating Amendment identifying (1) the Owner as the principal for whom the Manager is acting with respect to, and as the owner of, the Equipment (or so much thereof as is delivered on or prior to April 30, 1979) and (2) the Equipment (such Lease Agreement (to the extent it relates to the Units), Equipment Schedule and Designating Amendment being hereinafter referred to as the "Lease"); and

WHEREAS, concurrently with execution of this Lease Agreement Assignment, the Assignee is acquiring pursuant to an agreement and assignment dated as of the date hereof (hereinafter called the "Assignment"), the security title, rights, and interests of the Vendor under the Conditional Sale Agreement in the Units, all upon and subject to the terms and conditions of a finance agreement (hereinafter called the "Finance Agreement") dated as of the date hereof among the Assignee, the Vendor, the Manager, the Vendee and the Guarantor;

WHEREAS, the Guarantor is willing to guarantee the obligations of the Vendee under the Conditional Sale Agreement as additional security for Lender, and agree to perform the terms and conditions thereunder;

(1) The Guarantor hereby unconditionally guarantees payment by Vendee of all sums payable by Vendee under the terms and provisions of the Conditional Sale Agreement, including, without limitation, the Conditional Sale Indebtedness and the Maintenance Escrow Account (as defined in the Conditional Sale Agreement), and further guarantees performance and discharge by Vendee of all its obligations and liabilities under the Conditional Sale Agreement in accordance with its terms, or under any extensions or modifications thereof to which the Guarantor has consented in accordance with the proviso in section 4 hereof. Guarantor agrees that if the Vendee shall fail to pay any such amount when and as the same shall be due and payable, or to perform and discharge each such obligation or liability in accordance with the terms of the Conditional Sale Agreement, Guarantor will forthwith pay to the Lender an amount equal to any such amount or perform and discharge any such obligation or liability, as the case may be and upon tender of any such payment or performance by the Guarantor, the Lender shall be obligated to accept such payment or performance by Guarantor hereunder.

(2) The foregoing Guaranty is absolute, continuing and unlimited, and shall not be discharged except by payment in full of all amounts due pursuant to this Guaranty, or performance and discharge of all of the obligations and liabilities of the Vendee under the Conditional Sale Agreement, and only to the extent of any such payment, performance and discharge. The obligations hereunder of the Guarantor are independent of

the obligations of the Vendee, and a separate action may be brought and prosecuted against the Guarantor whether or not an action is brought against the Vendee, or whether or not the Vendee is joined in any such action or actions. Without limiting the generality of the foregoing, such obligations, and the rights of the Lender, as assignee of the Vendor's rights under the Conditional Sale Agreement, or any subsequent assignee of the Lender to enforce the same by proceedings, whether by action at law, suit in equity or otherwise, shall not in any way be effected by (i) any insolvency, bankruptcy, liquidation, reorganization, readjustment, composition, dissolution, winding up or other proceeding involving or affecting ownership of any of the capital stock of the Vendee, the Guarantor or others, or (ii) any change in the ownership of any of the capital stock of the Vendee.

Guarantor does hereby waive notice of, and does hereby consent to, the application of any collateral as security by Lender subject to the proviso in section 5 hereof.

(3)(a) Lender shall have the right to make an election (the "Election"), in accordance with the procedures set forth in section 3(d) hereof; to remain Lender under the Finance Agreement for the full term of the Conditional Sale Indebtedness, pursuant to the terms and provisions of the Conditional Sale Agreement.

(b) If Lender shall make the Election, this Guaranty and all of Guarantor's rights, duties, liabilities and obligations hereunder arising after the Termination Date (as defined in section 3(d)(3) hereof) shall terminate on the later of the Termination Date and the date of delivery by Guarantor of its certificate referred to in section 3(d)(2) hereof.

(c) If Lender shall not make the Election, this Guaranty and all of Guarantor's rights, duties, liabilities and obligations hereunder shall continue unaffected by this section 3.

(d) Lender shall make the Election as follows:

(1) Not later than 15 days prior to the date six months after the Closing Date, Lender shall deliver to Guarantor and Vendee written notice (the "Notice of Intention") of its intention to make the Election.

(2) Not later than 15 days after receipt of the Notice of Intention, Guarantor shall deliver to Lender an officer's certificate from Guarantor certifying that no Event of Default or event which with the giving of notice or the lapse of time, or both, would constitute an Event of Default has occurred and is continuing under this Guarantee or the Conditional Sale Agreement, or, if any such Event of Default or event has occurred and is continuing, describing such Event of Default or event in reasonable detail.

(3) Upon receipt by Lender of the certificate referred to in section 3(d)(2) hereof, the certificate referred to in section (d)(2)(A) of Article 25 of the Conditional Sale Agreement, as amended, and the opinions referred to in section (d)(2)(B) and (d)(2)(C) of Article 25 of the Conditional Sale Agreement, as amended, all in form and substance satisfactory to Lender, or, if Lender decides to waive any requirement relating to such certificates and opinions, then, upon such waiver, but in no event after the date 45 days after receipt by Guarantor of the Notice of Intention, Lender may deliver written notice (the "Notice of Election") to Guarantor and Vendee that it has made the Election. In any such case, the date of delivery of the Notice of Election to Guarantor shall be the Termination Date. If Lender fails timely so to deliver the Notice of Election, Lender shall be deemed not to have made the Election.

(e) The Election, Notice of Intention, Notice of Election and Termination Date referred to in this section 3 are the same Election, Notice of Intention, Notice of Election and Termination Date referred to in Article 25 of the Conditional Sale Agreement.

(4) Subject to the provisions of the Conditional Sale Agreement, the Lender may deal with the Vendee in the same manner and as freely as if this Guaranty did not exist, and shall be entitled, among other things, to grant the Vendee such extension or extensions of time to perform any act or acts as may seem advisable to the Lender, at any time and from time to time, without terminating, affecting or impairing the validity of this Guaranty or the obligations of the Guarantor hereunder; provided, however, Lender shall not, without the prior written consent of the Guarantor, which consent may be unreasonably withheld, amend or modify Articles 1, 2, or 4 of the Conditional Sale Agreement, or amend

or modify any other terms or provisions of the Conditional Sale Agreement in a manner which increases the duties or liabilities of the Guarantor hereunder.

(5) The Guarantor waives all presentments, demands for performance, notices of non-performance, protests, notices of protests, notices of dishonor, and notice of acceptance of this Guaranty; provided, however, Lender shall provide Guarantor with copies of all notices to Vendee under Article 15 of the Conditional Sale Agreement and shall give Guarantor notice, as soon as practicable, of any Event of Default under the Conditional Sale Agreement of which Lender has actual knowledge. No waiver shall be deemed to have been made by the Lender of any of the rights hereunder unless the same shall be in writing and signed on behalf of the Lender; and any such waiver shall be a waiver only with respect to the specific matter involved, and shall in no way impair the rights of the Lender or any assignee or the obligations of the Guarantor to the Lender or any such assignee in any other respect at any other time.

(6) During the term of the Conditional Sale Agreement, and so long as the Conditional Sale Indebtedness, or any portion thereof, remains outstanding, Guarantor hereby agrees and shall pay to Lender, on each date specified for payments of the Conditional Sale Indebtedness, an amount equal to the difference, if any, between (i) interest on the Conditional Sale Indebtedness at Three Per Cent (3%) over The Provident Bank prime rate in effect from time to time, and (ii) interest on the Conditional Sale Indebtedness at Thirteen Per Cent (13%); provided, however, that in the event The Provident Bank prime rate in effect from time to time is less than Ten Per Cent (10%), Lender shall pay to Guarantor on each date specified for payments of the Conditional Sale Indebtedness an amount equal to the difference between (i) interest on the Conditional Indebtedness at Thirteen Per Cent (13%), and (ii) interest on the Conditional Sale Indebtedness at Three Per Cent (3%) over The Provident Bank prime rate in effect from time to time. Lender shall provide Guarantor with notice, as soon as practicable, of changes in The Provident Bank prime rate in effect from time to time.

(7) In the event Lender fails to exercise its right to remain as the Lender pursuant to the terms of the Finance Agreement under section 3 hereof, Guarantor shall have the right to pay to Lender the full amount of the unamortized portion of the Conditional Sale Indebtedness, plus accrued interest, without prepayment premium, and any

and all other sums due and owing to Lender, at any time after the date Six (6) months following the Closing Date upon not less than Fifteen (15) days prior written notice and upon such payment by Guarantor, Lender shall sell, assign and transfer all of its right, title and interest in and to the Equipment, and in, to and under the Conditional Sale Agreement, Assignment, Lease Agreement Assignment and Management Agreement Assignment to Guarantor, without recourse to Lender; provided, however, Lender shall represent and warrant to Guarantor that its interests conveyed hereunder are free and clear of any claims, liens or encumbrances resulting from any acts of Lender, or arising by, through or under Lender.

(8) In the event Lender fails to exercise its right to remain as the Lender pursuant to the terms of the Finance Agreement for full term thereof under section 3 hereof, Guarantor shall have the unconditional obligation to pay to Lender the unamortized portion of the Conditional Sale Indebtedness, plus accrued interest thereon, and any and all other sums due and owing to Lender, without prepayment premium, on March 31, 1981, or at any time thereafter upon not less than Fifteen (15) days prior written notice from Lender, and upon payment by Guarantor hereunder, Lender shall sell, assign and transfer all of its right, title and interest in and to Equipment, and in, to and under the Conditional Sale Agreement, Assignment, Lease Agreement Assignment and Management Agreement Assignment to Guarantor, without recourse to Lender; provided, however, Lender shall represent and warrant to Guarantor that its interests conveyed hereunder are free and clear of any claims, liens or encumbrances resulting from any acts of Lender, or arising by, through or under Lender.

(9) Guarantor hereby represents and warrants as follows:

(a) Guarantor is a corporation legally incorporated, validly existing and in good standing under the laws of the State of New Jersey, with adequate corporate power to own its own properties and to carry on its business as now conducted and to enter into this Guaranty;

(b) This Guaranty has been duly authorized, executed and delivered by the Guarantor and constitutes a legal, valid and binding agreement of the Guarantor, enforceable in accordance with its terms;

(c) No approval is required from any public regulatory body with respect to the entering into or performance of this Guaranty; and no filing, recording or depositing (or giving of notice) of this Guaranty with any federal, state, local or foreign government or agency thereof is necessary in order to protect and/or perfect the interests of the Lender hereunder;

(d) The entering into and performance of this Guaranty by Guarantor will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Guarantor is a party or by which it may be bound;

(e) No mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interest of the Guarantor, now attaches or hereafter will attach to the Equipment, or in any manner affects or will affect adversely the Lender's right, title and interest in the Equipment;

(f) There are pending or threatened actions or proceedings before any court, arbitrator or governmental or administrative agency or any other matter which might materially adversely affect the financial condition, business or operation of Guarantor, or the ability of Guarantor to perform its obligations hereunder.

(10) The Guarantor agrees to pay reasonable attorneys' fees and all other costs and expenses which may be incurred by the Lender in the enforcement of this Guaranty.

(11) In the event that Guarantor defaults in the payment of any amount due to Lender hereunder, or the performance of any duties and obligations of Guarantor hereunder (hereinafter "Event of Default"), the amount of any payment not made when due shall bear interest at the rate of Seven Per Cent (7%) over The Provident Bank prime rate in effect from time to time, but not in excess of the maximum applicable legal rate of interest, and if such Event of Default continues for a period of Twenty (20) days after notice from Lender, Lender shall have the right to exercise any power or remedy now or hereafter existing at law or in equity. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. The Lender's acceptance of



any payment after it shall have become due hereunder shall not be deemed to alter or affect the Guarantor's obligations or the Lender's rights hereunder with respect to any subsequent payments or default therein.

(12) The Guarantor agrees and shall submit to the Lender such quarterly and annual financial statements, certified by an officer of Guarantor, and in the case of annual statements, audited by an independent certified public accountant, all prepared in accordance with generally accepted accounting principles consistently applied, as Lender shall reasonable request, including, in any event, audited annual statements within ninety (90) days following the end of Guarantor's fiscal year in each year during the term of this Guaranty.

(13) The terms of this Guaranty may not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by the parties hereto.

(14) Any notice required or permitted to be given either party hereto to the other shall be deemed to have been given when deposited in the United States Certified Mails, First Class Postage Prepaid, addressed as follows:

(a) If to the Guarantor:

Rex-Noreco, Inc.  
616 Palisades Avenue  
Englewood Cliffs, New Jersey 07632

with a copy to:

Battle, Fowler, Jaffin, Pierce & Kheel  
280 Park Avenue  
New York, New York 10017

Attention: Thomas V. Glynn

(b) If to the Lender:

The Provident Bank  
One East Fourth Street  
Cincinnati, Ohio 45202

Attention: J. Lynn Brewbaker

with a copy to:

Keating, Muething & Klemkamp  
One East Fourth Street  
Cincinnati, Ohio 45202

Attention: Richard D. Siegel

(15) If any term or provision of this Guaranty or the application thereof to any circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Guaranty, or the application of such term or provision to circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(16) The Guarantor hereby agrees to execute and deliver all such instruments and take all such action as the Lender from time to time may reasonably request in order to fully effectuate the purposes of this Guaranty. Any costs or expenses incurred by the Guarantor in connection with such requests shall be paid by Guarantor. The Guarantor shall not be required to execute any instruments or to take any action that increases the Guarantor's obligations hereunder.

(17) This Guaranty shall inure to the benefit of and be binding upon the successors and assigns of the Lender and Guarantor. This Guaranty shall be assignable by the Lender without the consent of the Guarantor, and by any assignee of the Lender without the consent of the Guarantor. No assignment of this Guaranty shall increase the obligations of the Guarantor hereunder, and the Guarantor shall be under no obligation to any assignee except upon written notice of such assignment.

(18) This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, the undersigned have duly executed this Guaranty and Agreement as of the date first herein above set forth.

REX-NORECO, INC.  
(Guarantor)

BY: *Marcelo Salazar, Pres.*

THE PROVIDENT BANK  
(Lender)

BY: *[Signature]*

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381041

STATE OF

*New York*

COUNTY OF

*New York*

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On this 14th day of March, 1979, before me, personally appeared Mark A. Salitan, to me personally known, who being by me duly sworn, says that he is the President of REX-NORECO, INC., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(seal)

*Martin S. Sussman*  
Notary Public

MARTIN S. SUSSMAN  
Notary Public, State of New York  
No. 30-4500640  
Qualified in Nassau County  
Commission Expires March 30, 1979

STATE OF

*Ohio*

COUNTY OF

*Hamilton*

ss

On this 12th day of March, 1979, before me, personally appeared Robert C. Lintz, to me personally known, who being by me duly sworn, says that he is the Executive Vice President of the Provident Bank, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(seal)

*Paul V. Murthing*  
Notary Public

PAUL V. MURTHING, Attorney at Law  
Notary Public, State of Ohio  
My Commission has no expiration date  
Section 147-03 O.R.C.



EXHIBIT "A"

ONE: No director, officer, or employee of the HCRC during their tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this lease or the proceeds thereof.

TWO: In connection with this lease, the parties hereto (hereinafter in Appendix "A" and A-1 referred to as the "Contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts," as set forth in Appendix A, attached hereto and made a part hereof. The parties hereto further covenant that they will comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241 as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d and 2000a-2000h-6.

THREE: HCRC and the Lessor shall make available to the auditors of the State of Michigan or of any governmental agency having jurisdiction over HCRC the records of revenues and costs related to this lease. All such records for each year will be kept for a period of at least four (4) years after the end of that particular year, and any such records that are the subject of an auditing dispute shall be kept for the term of that dispute. The parties hereto shall allow inspection of the above-described records by the authorized agents of the State of Michigan and the Federal Railroad Administration during regular business hours upon reasonable notice.

APPENDIX A AND APPENDIX A-1  
IS ATTACHED HERETO AND MADE  
A PART HEREOF

In connection with the performance of work under the contract, the contractor agrees as follows:

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Breach of this covenant may be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinbefore set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, age, sex, height, weight or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship.
4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight or marital status.
5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.
6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.
7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission, and/or its agent, for purposes of investigation to ascertain compliance with the contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Civil Rights Commission\* finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated, and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or

## APPENDIX A-1

### Affirmative Action Requirements.

In connection with the performance of this Agreement, the contractor agrees as follows:

(a) The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation Title 49, C.F.R., Part 21, as they may be amended from time to time, (hereinafter referred to as "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

(b) The contractor, with regard to the work performed by it under this Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.1 of the Regulations, including employment practices when the contract covers a job set forth in Appendix B of the Regulations.

(c) In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of its obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(d) The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the contract holder, the Michigan State Highway Commission or the Federal Railroad Administration (hereinafter referred to as the "FRA") be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the contract holder or to the FRA whichever is appropriate, and shall set forth what efforts it has made to obtain the information.

(e) In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the contract holder shall impose such contract sanctions as it, the Michigan State Highway Commission, or the FRA may determine to be appropriate, including but not limited to:

(1) Withholding of payments to the contractor under this Agreement until it complies; and/or

(2) Cancellation, termination or suspension of this Agreement in whole or in part.

2. As a condition to the award of this contract, Contractor hereby agrees to observe and comply with the following:

(i) No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under, any Contract.

3. A Contractor under any Contract to which these clauses apply shall not, directly or through contractual or other arrangements, on the ground of race, color, national origin or sex:

(A) Deny a person any service, financial aid, or other benefit provided under such Contract;

(B) Provide any service, financial aid, or other benefit which is different, or is provided in a different manner, from that provided to others under such Contract;

(C) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid or other benefit under such Contract;

(D) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid or other benefit under such Contract; or

(E) Deny a person an opportunity to participate in such Contract through the provision of services or otherwise afford him an opportunity to do so which is different from that afforded others under such Contract.

4. A Contractor, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such Contract or the class of persons to whom, or the situations to which such services, financial aid, other benefits, or facilities will be provided under any such Contract, or the class of persons to be afforded an opportunity to participate in any such Contract, shall not directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the Contract with respect to individuals of a particular race, color, national origin or sex.



5. In determining the site or location of facilities, a Contractor shall not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any Contract to which these clauses apply on the grounds of race, color, national origin or sex, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of these clauses.
6. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, national origin or sex. Except as otherwise required by the regulations or orders of the Administrator, the Contractor shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, national origin or sex. Such action shall include, but not be limited to the following: employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency's representative setting forth the provisions of these nondiscrimination clauses. The Contractor understands and agrees that it shall not be an excuse for the Contractor's failure to provide affirmative action that the labor organizations with which the Contractor has a collective bargaining agreement failed or refused to admit or qualify minorities for admission to the union, or that the provisions of such agreements otherwise prevent Contractor from implementing its affirmative action program.
7. The Contractor shall not discriminate against any business organization in the award of any subcontract because of race, color, national origin or sex of its employees, managers or owners. Except as otherwise required by the regulations or orders of the Administrator, the Contractor shall take affirmative action to insure that business organizations are permitted to compete and are considered for awards of subcontracts without regard to race, color, national origin or sex.
- As used in these clauses, the services, financial aid, or other benefits provided under a Contract under the Rail Acts include any service, financial aid, or other benefit provided in or through a facility funded through financial assistance provided under the Rail Acts.
9. The enumeration of specific forms of prohibited discrimination does not limit the generality of the prohibition in paragraph (2)(i) of this appendix.

10. These clauses do not prohibit the consideration of race, color, national origin or sex if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in Contractor's operations or activities on the grounds of race, color, national origin or sex. Where prior discriminatory or other practice or usage tends, on the grounds of race, color, national origin or sex, to exclude individuals or businesses from participation in, to deny them the benefits of, or to subject them to discrimination under any Contract to which these clauses apply, the Contractor must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage to which 49 CFR Part 265 applies, the Contractor is expected to take affirmative action to insure that no person is excluded from participation in or denied the benefits of the Contract on the grounds of race, color, national origin or sex, and that minorities and minority businesses are afforded a reasonable opportunity to participate in employment and procurement opportunities that will result from financial assistance provided under the Rail Acts.
11. The Contractor agrees to take such actions as are necessary to monitor its activities and those of its subcontractors who will be paid in whole or in part with funds provided by the Rail Acts or from obligations guaranteed by the Administrator pursuant to the Rail Acts in order to carry out affirmatively the purposes of paragraph (2) above, and to implement the affirmative action program developed and implemented pursuant to 49 CFR 265.
12. The Contractor shall, in all advertisements for employees, or solicitations for services or materials from business organizations placed by or on behalf of the Contractor in connection with any Contract funded in whole or in part with financial assistance under the Rail Acts, state that all applicants for employment will receive consideration for employment, and all business organizations will receive consideration for an award of a subcontract, without regard to race, color, national origin or sex.
13. The Contractor shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the Agency's representative, informing the labor organization or workers' representative of the Contractor's commitments under section 905 of the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
14. The Contractor shall comply with all provisions of section 905 of the Act, the Civil Rights Act of 1964, any other Federal civil rights act, and with the rules, regulations and orders issued under such acts.

15. The Contractor shall furnish all information and reports required by the rules, regulations and orders of the Administrator, and will permit access to its books, records, and accounts by the Administrator for purposes of investigation to ascertain compliance with rules, regulations and orders referred to in paragraph 14 hereof.
16. The Contractor shall furnish such relevant procurement information as may be requested by the Minority Business Resource Center of the Agency. Upon the request of the Contractor, the Center shall keep such information confidential to the extent necessary to protect commercial or financial information or trade secrets to the extent permitted by law.
17. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this agreement, or with the provisions of section 905 of the Act, the Civil Rights Act of 1964, or with any other Federal civil rights act, or with any rules, regulations, or orders issued under such acts, this contract will, after notice of such noncompliance, and after affording a reasonable opportunity for compliance, be cancelled, terminated, or suspended in whole or in part.
18. The Contractor shall not enter into any subcontract or subcontract modification whether for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, or for construction, in connection with a Contract, with a subcontractor debarred from or who has not demonstrated eligibility for Federal or federally assisted contracts, and will carry out such sanctions and penalties for violation of this part as may be imposed upon contractors and subcontractors by the Administration or any other authorized Federal official. The Contractor shall insure that the clauses required by 41 CFR Sec. 60-1.4b implementing Executive Order No. 11246 will be placed in each non-exempt federally assisted construction contract.
19. The Contractor agrees to comply with and implement the written affirmative action program established pursuant to section 265.11 of Title 49 CFR.
20. The Contractor agrees to notify the Administrator promptly of any law suit or complaint filed against the Contractor alleging discrimination on the basis of race, color, national origin or sex.
21. The Contractor shall include the preceding provisions of paragraphs (1) through (20) in every subcontract or purchase order, whether for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, or for construction relating to this Contract.

The Contractor will take such action with respect to any such subcontract or purchase order as the Administrator may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Administrator, the Contractor may request the United States to enter into such litigation.

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# EQUIPMENT SCHEDULE

REX RAILWAYS, INC. hereby leases the following Boxcars to Lenawee County Railroad Co., Inc., pursuant to that certain Lease Agreement dated as of Sept.. 23.... 1977.

A.A.R. Mech. Desiz	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
30 XM	Boxcars	LCRC 1001- 1030 incl.	50'6"	9'6"	11'	10'	30
<p>This Equipment Schedule amends the Lease Agreement dated September 23, 1977 between Lenawee County Railroad Co., Inc. and Rex Railways, Inc. and incorporates as part of said Lease the fact that Lenawee, the lessee therein has agreed to accept thirty (30) XM new boxcars to be supplied by Rex, the lessor therein during the first quarter of 1978. The original Lease Agreement referred to above covered ten such boxcars and this amendatory Equipment Schedule now amends from ten (10) XM boxcars to a total of thirty (30) XM boxcars.</p>							

REX RAILWAYS, INC.

LENAWEE COUNTY RAILROAD COMPANY, INC.

Paul A. Aultman, Chairman  
(TITLE)

John F. Martin, President  
(TITLE)

DATE: 11/24/77

DATE: 11/24/77



# EQUIPMENT SCHEDULE

REX RAILWAYS, INC. hereby leases the following Boxcars to Lenawee County Railroad Co., Inc. pursuant to that certain Lease Agreement dated as of Sept. 23, 1977.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM BOXCARS	Boxcars	LCRC 2001- 2100 incl.	50'6"	9'6"	11'3"	10'	100

This Equipment Schedule amends the Lease Agreement dated September 23, 1977 as amended on November 21, 1977 by and between Lenawee County Railroad Co., Inc. and Rex Railways, Inc. and incorporates as part of said Lease the fact that Lenawee County Railroad Co., Inc. has agreed to accept one hundred (100) new XM boxcars to be supplied by Rex Railways, Inc., the lessor therein during the first half of 1979. The original Lease Agreement and amendment referred to above covered 30 such boxcars and this amendatory Equipment Schedule now amends from thirty (30) XM boxcars to a total of one hundred and thirty (130) XM boxcars. For the purposes of this Equipment Schedule Amendment covering the additional one hundred (100) XM boxcars, it is understood that Rex Railways, Inc. is principal and/or agent for the parties named on the Schedule referred to in Section Paragraph 1A (Rex Railways, Inc. and such parties are herein collectively referred to as "RRI" except that, as to any particular boxcar referred to in Section Paragraph 1A, only Rex Railways, Inc. and the party identified in the Schedule as owner/lessor of such Boxcar is referred to as "RRI") as Lessor and Lenawee County Railroad Company, Inc., Box 278, Adrian, Michigan, a Michigan corporation (The "Lessee"), as Lessee.

Further, the main Lease Agreement dated September 23, 1977 is amended so that this language is added at the end of Paragraph 1A:

"except that any Schedule may be amended by RRI alone from time to time, and which upon such amendment be a part of this Agreement, in order to identify (i) the principal for whom RRI is acting who owns any Boxcars and (ii) the Boxcars owned by such principal."

In addition it is agreed that Paragraph 6.A.(i) is amended for the purpose of the one hundred (100) Boxcars subject to this Amendment.